

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

SECOND REGULAR SESSION
FIFTY-NINTH LEGISLATURE

**FIFTY-THIRD LEGISLATIVE DAY
THURSDAY, FEBRUARY 28, 2008**

Senate Chamber

President Risch called the Senate to order at 10 a.m.

Roll call showed all members present except Senator McKenzie, absent and formally excused by the Chair; and Senators Burkett, Cameron, Pearce, Richardson, Schroeder, Stegner, Stennett, and Werk, absent and excused.

Prayer was offered by Chaplain Goebel.

The Pledge of Allegiance was led by Sharri Swanson, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 27, 2008, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Pearce, Schroeder, Stennett, and Werk were recorded present at this order of business.

February 28, 2008

The JUDICIARY AND RULES Committee reports that **S 1445** has been correctly printed.

DARRINGTON, Chairman

S 1445 was referred to the Finance Committee.

February 27, 2008

The JUDICIARY AND RULES Committee reports that Enrolled **SCR 126** was delivered to the Office of the Secretary of State at 1:10 p.m., February 27, 2008.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

February 27, 2008

The STATE AFFAIRS Committee reports out **S 1413** and **S 1435** with the recommendation that they be referred to the Fourteenth Order of Business for amendment.

McKENZIE, Chairman

There being no objection, **S 1413** and **S 1435** were referred to the Fourteenth Order of Business, General Calendar.

February 27, 2008

The STATE AFFAIRS Committee reports out **S 1441** with the recommendation that it do pass.

McKENZIE, Chairman

S 1441 was filed for second reading.

February 28, 2008

The FINANCE Committee reports out **S 1445** with the recommendation that it do pass.

CAMERON, Chairman

S 1445 was filed for second reading.

February 27, 2008

The RESOURCES AND ENVIRONMENT Committee reports out **S 1424** and **H 428** with the recommendation that they do pass.

SCHROEDER, Chairman

S 1424 and **H 428** were filed for second reading.

February 27, 2008

The HEALTH AND WELFARE Committee reports out **S 1443** and **H 389**, as amended, with the recommendation that they do pass.

LODGE, Chairman

S 1443 and **H 389**, as amended, were filed for second reading.

February 27, 2008

The JUDICIARY AND RULES Committee reports out **S 1438, H 446**, as amended, and **HCR 38** with the recommendation that they do pass.

DARRINGTON, Chairman

S 1438 and **H 446**, as amended, were filed for second reading.

HCR 38 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 27, 2008

The JUDICIARY AND RULES Committee reports out **H 410**, as amended, with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

DARRINGTON, Chairman

There being no objection, **H 410**, as amended, was referred to the Fourteenth Order of Business, General Calendar.

February 28, 2008

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 465** with the recommendation that it do pass.

HILL, Chairman

H 465 was filed for second reading.

February 28, 2008

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 490** with the recommendation that it do pass, and with the recommendation that it be placed on the Consent Calendar.

HILL, Chairman

H 490 was filed for second reading.

February 27, 2008

The EDUCATION Committee reports out **S 1409** with the recommendation that it do pass.

GOEDDE, Chairman

S 1409 was filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

February 27, 2008

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1250, S 1307, and S 1342

As Always - Idaho, *Esto Perpetua*
/s/ C. L. 'Butch' Otter
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

February 27, 2008

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1274, S 1282, S 1287, S 1317, and S 1322

As Always - Idaho, *Esto Perpetua*
/s/ C. L. 'Butch' Otter
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

February 27, 2008

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bill, to wit:

S 1273

As Always - Idaho, *Esto Perpetua*
/s/ C. L. 'Butch' Otter
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

Senators Burkett, Cameron, Richardson, and Stegner were recorded present at this order of business.

February 27, 2008

Mr. President:

I transmit herewith **H 472**, **H 514**, and **H 555**, which have passed the House.

ALEXANDER, Chief Clerk

H 472, **H 514**, and **H 555** were filed for first reading.

February 27, 2008

Mr. President:

I return herewith **S 1319** and **S 1320**, which have passed the House.

ALEXANDER, Chief Clerk

S 1319 and **S 1320** were referred to the Judiciary and Rules Committee for enrolling.

February 27, 2008

Mr. President:

I transmit herewith Enrolled **H 352**, **H 360**, **H 387**, **H 390**, **H 419**, and **H 420** for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled **H 352**, **H 360**, **H 387**, **H 390**, **H 419**, and **H 420** and ordered them returned to the House.

February 27, 2008

Mr. President:

I return herewith Enrolled **SCR 125**, which has been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled **SCR 125** was referred to the Judiciary and Rules Committee for transmittal to the Office of the Secretary of State.

February 27, 2008

Mr. President:

I return herewith Enrolled **S 1349**, which has been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled **S 1349** was referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading and Reference of Bills,
House Petitions, Resolutions, and Memorials**

S 1446

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO REPORTING BY LOBBYISTS; AMENDING SECTION 67-6602, IDAHO CODE, TO REVISE DEFINITIONS; REPEALING SECTION 67-6619, IDAHO CODE, RELATING TO REPORTING BY LOBBYISTS; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6619, IDAHO CODE, TO PROVIDE PROCEDURES, TIMELINES AND CONTENTS REQUIRED FOR REPORTS BY LOBBYISTS TO THE SECRETARY OF STATE; AND AMENDING SECTION 18-1356, IDAHO CODE, TO PROVIDE APPLICATION TO EXECUTIVE OFFICIALS, TO PROVIDE AN EXCEPTION FOR BENEFITS RECEIVED AS A RESULT OF LOBBYING ACTIVITIES THAT ARE DISCLOSED IN REPORTS TO THE SECRETARY OF STATE AND TO PROVIDE NONAPPLICATION.

S 1447

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE DEPARTMENT OF ADMINISTRATION AND GROUP INSURANCE; AMENDING SECTION 67-5761, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION REGARDING GROUP INSURANCE; AMENDING SECTION 67-5771, IDAHO CODE, TO PROVIDE FOR THE CREATION OF THE GROUP INSURANCE FUND, TO PROVIDE FOR CORRECT STATUTORY CITATIONS AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 67-5772, IDAHO CODE, TO PROVIDE REFERENCE TO THE GROUP INSURANCE FUND, TO PROVIDE FOR CONTRIBUTIONS ON THE BASIS OF APPROPRIATED SALARIES AND TO DELETE REFERENCE TO RULES.

S 1448

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5201, IDAHO CODE, TO DEFINE A TERM, TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5224, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO AMENDMENT OR MODIFICATION OF A

PENDING RULE BY CONCURRENT RESOLUTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5226, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO AMENDMENT OR MODIFICATION OF A TEMPORARY RULE BY CONCURRENT RESOLUTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5250, IDAHO CODE, TO REMOVE A DEFINITION; AND AMENDING SECTION 67-5291, IDAHO CODE, TO ADD LANGUAGE PROVIDING FOR REJECTION OF A RULE IN WHOLE OR IN PART AND TO REMOVE LANGUAGE RELATING TO AMENDMENT OR MODIFICATION OF A RULE BY CONCURRENT RESOLUTION.

S 1449

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO NAVIGATIONAL ENCROACHMENTS; AMENDING SECTION 58-1308, IDAHO CODE, TO REVISE CERTAIN CIVIL PENALTY PROVISIONS, TO PROVIDE FOR THE ASSESSMENT OF CIVIL PENALTIES IN CONJUNCTION WITH OTHER ADMINISTRATIVE ACTIONS, TO PROVIDE A CONDITION FOR THE ASSESSMENT OF CIVIL PENALTIES, TO PROVIDE FOR CIVIL PENALTIES WHERE VIOLATIONS CAUSE HARM TO WATER QUALITY, FISHERIES, OR OTHER PUBLIC TRUST VALUES, TO PROVIDE LIABILITY FOR SPECIFIED EXPENSES, TO PROVIDE THAT DESIGNATED ACTIONS SHALL NOT RELIEVE PERSONS COMMITTING VIOLATIONS FROM CERTAIN CIVIL ACTIONS AND DAMAGES, TO PROVIDE FOR THE LAKE PROTECTION FUND AND TO MAKE TECHNICAL CORRECTIONS.

S 1450

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO SCHOOL DISTRICT REAL AND PERSONAL PROPERTY; AMENDING SECTION 33-601, IDAHO CODE, TO PROVIDE FOR THE TRANSFER OR CONVEYANCE OF ANY REAL OR PERSONAL PROPERTY OWNED BY A SCHOOL DISTRICT TO THE IDAHO HOUSING AND FINANCE ASSOCIATION AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

S 1446, S 1447, S 1448, S 1449, and S 1450 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 472, by Resources and Conservation Committee, was introduced, read the first time at length, and referred to the Resources and Environment Committee.

H 514, by Resources and Conservation Committee, was introduced, read the first time at length, and referred to the Agricultural Affairs Committee.

H 555, by Appropriations Committee, was introduced, read the first time at length, and referred to the Finance Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

S 1393, by Commerce and Human Resources Committee, was read the second time at length and filed for third reading.

H 469, by Revenue and Taxation Committee, was read the second time at length and filed for third reading.

H 460, by Local Government Committee, was read the second time at length and filed for third reading.

H 392, H 393, and H 394, by Agricultural Affairs Committee, were read the second time at length and filed for third reading.

S 1436, by State Affairs Committee, was read the second time at length and filed for third reading.

S 1379, as amended, by Transportation Committee, was read the second time at length and filed for third reading.

S 1400, as amended, by Local Government and Taxation Committee, was read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President Pro Tempore called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **S 1361, S 1398, S 1399, S 1420, S 1414, and H 440**, without recommendation, amended as follows:

SENATE AMENDMENT TO S 1361 AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 11 through 25 and insert:

"49-658. SCHOOL ZONE SPEED LIMIT -- PENALTY. (1) No person shall operate a vehicle in excess of the posted maximum speed limit established for a posted school zone. If a posted school zone speed limit sign includes the words "when children are present," then "when children are present" shall mean whenever one (1) or more children are on the roadway, sidewalk, pathway, road shoulder, in front of school buildings or on adjacent school grounds. The definition applies to children present on the same side of the street as the school building or across the street from the school building in any direction within the marked school zone.

(2) Violation of the provisions of this section shall be an infraction punishable by a minimum penalty of not less than seventy-five dollars (\$75.00)."

CORRECTION TO TITLE

On page 1, delete lines 3 through 6, and insert: "THE ADDITION OF A NEW SECTION 49-658, IDAHO CODE, TO REQUIRE COMPLIANCE WITH A SCHOOL ZONE POSTED SPEED LIMIT FOR A POSTED SCHOOL ZONE, TO DEFINE "WHEN CHILDREN ARE PRESENT" AND TO PROVIDE A MINIMUM PENALTY."

SENATE AMENDMENT TO S 1398

AMENDMENTS TO SECTION 1

On page 1 of the printed bill, in line 30, delete "leaf".

On page 4, in line 11, delete ", and in a con-" and delete lines 12 and 13 and insert: "."; in line 41, delete "The state" and delete lines 42 through 44 and insert: "The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three (3) year certification period."

SENATE AMENDMENT TO S 1399

AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 10 through 43 and delete page 2 and insert:

"55-115. HOMEOWNERS' ASSOCIATION MEETING LAW. (1) As used in this section:

(a) "Homeowners' association" shall have the same meaning as in section 45-810(6), Idaho Code.

(b) "Board" means the entity that has the duty of governing the association which may be referred to as the board of directors, executive board or any such similar name.

(c) "Member" or "membership" means any person or entity owning or possessing an interest in residential real property or lot within the physical boundaries of an established homeowners' association.

(d) "Executive session" means any meeting or part of a meeting of the board of directors which is closed to any member for the deliberation on certain matters.

(2) A homeowners' association's organic documents shall include the following provisions:

(a) A requirement to hold at least one (1) membership meeting each calendar year;

(b) A requirement that notice of any meeting of the homeowners' association or its board shall be given at least ten (10) days and no more than sixty (60) days prior to the meeting, which notice shall be distributed to all homeowners' association members by regular mail, electronic mail, hand-delivery or similar method agreed upon by the association membership or as stated in the association's organic documents;

(c) A requirement that all meetings of the homeowners' association and its board shall be open to its members;

(d) A requirement that any member of the homeowners' association shall be given the opportunity to speak or provide written information at meetings of the homeowners' association board on matters germane to the homeowners' association prior to the board's action or inaction;

(e) A requirement that special meetings may be called by written petition to the chairperson of the board by fifteen percent (15%) of the membership. Special meetings shall be noticed and held within thirty (30) days of delivery of the petition or at the next scheduled meeting, whichever shall first occur;

(f) A requirement that minutes of all homeowners' association meetings shall be taken and that copies of the minutes shall be made available to all members within thirty (30) days of the meeting to members requesting the same. At a minimum, the minutes shall state the time and place of the meeting, attendance, the issues discussed and the results of any votes taken;

(g) A requirement that a full accounting of finances, including a detail of all income and expenses of the homeowners' association, shall be provided to any member requesting the same at least once a year, or upon request to a party holding a contract to purchase a subject home from a member; and

(h) A copy of the last financial report of the homeowners' association shall, upon request, be provided to any prospective member of the homeowners' association or any representative or agent of any current or prospective member.

(3) In the event the governing instruments fail to incorporate one (1) or more of the foregoing provisions, the omitted provision(s), as set forth in subsection (2) of this section, shall be deemed incorporated as a matter of law. Should the governing instruments contain one (1) or more provisions inconsistent with or at variance with the provisions in subsection (2) of this section, they shall be construed so as to be consistent with this section.

(4) Notwithstanding the provisions of this section, the board may meet in executive session only upon majority vote of the board that extraordinary circumstances justify an executive session. Executive sessions may be held only to the extent necessary to consider litigation or pending litigation or to consider personnel decisions involving an employee or contractor. An executive session shall not be held for the purpose of taking any action or making any decision and no votes or official action may be taken.

(5) Unless otherwise provided by the association's organic documents, ministerial acts may be taken by the association's officers or board members, subject to a duty to report all such acts at the next meeting of the board or association."

SENATE AMENDMENT TO S 1420

AMENDMENT TO SECTION 1

On page 1 of the printed bill, in line 33, following "(3)" insert: "(a)"; and also in line 33, delete "in good faith" and insert: "reasonably"; delete line 37, and insert: "omissions."

(b) No cause of action shall be maintained against a licensed physi-"; and in line 41, delete "good faith" and insert: "good faith reasonable".

On page 2, delete lines 1 through 3 and insert: "the defibrillator if the prescription was written in good faith.

(c) This immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton or reckless misconduct.

(d) The protection afforded within paragraph (a) of this subsection is applicable to a person or entity who acquires or maintains a defibrillator if such person or entity complies with the maintenance requirements set forth in subsection (2)(a)(ii) of this section."

CORRECTIONS TO TITLE

On page 1, in line 5, delete "GOOD FAITH" and insert: "REASONABLE"; and in line 6, delete "NONAPPLICABILITY OF AN IMMUNITY" and insert: "IMMUNITIES".

SENATE AMENDMENT TO S 1414
AMENDMENTS TO SECTION 1

On page 1 of the printed bill, in line 16, delete "such" and insert: "~~such~~ that this subsection (1)(a) shall not apply to any winery, as defined in section 23-1303, Idaho Code, or to"; also in line 16, delete "as shall have been so" and insert: "~~as shall have~~ that has been so"; and in line 17, following "1975" delete "1" and delete lines 18 through 42 and insert: "; or".

CORRECTION TO TITLE

On page 1, in line 4, delete "PERSONS" and insert: "WINERIES".

SENATE AMENDMENT TO H 440
AMENDMENT TO SECTION 3

On page 6 of the printed bill, in line 51, following "2009" insert: ". Liens and encumbrances on truck campers that were filed with the office of the secretary of state in compliance with chapter 9, title 28, Idaho Code, prior to January 1, 2009, shall be in full force and effect until said lien or encumbrance is satisfied and released by the lienholder who perfected the original lien or encumbrance".

CORRECTION TO TITLE

On page 1, in line 5, delete "TITLED AND" and insert: "TITLED,"; and in line 6, following "2009" insert: ", AND TO PROVIDE FOR LIENS AND ENCUMBRANCES FILED PRIOR TO JANUARY 1, 2009".

The Committee also has **S 1329** and **S 1433** under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Langhorst, the report was adopted by voice vote.

S 1361, as amended, **S 1398**, as amended, **S 1399**, as amended, **S 1420**, as amended, and **S 1414**, as amended, were referred to the Judiciary and Rules Committee for engrossing and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

H 440, as amended in the Senate, was filed for first reading as amended, and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 10:55 a.m. until the hour of 10 a.m., Friday, February 29, 2008.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary